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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/430,354	10/28/1999	STEPHEN K. JOHNSON	10992660-1	7167

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FORT COLLINS, CO 80527-2400

EXAMINER

SHERRILL, JASON L

ART UNIT	PAPER NUMBER
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2622

DATE MAILED: 08/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/430,354	JOHNSON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jason L Sherrill	2622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 6/16/03.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4, 6, 8, 11, 13, 16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albal (U.S. Patent No. 5,826,034) and in further view of Park (U.S. Patent No. 6,545,774).

For claims 1, 8 and 13, Albal discloses a system and method for electronically transmitting to an electronic mail server electronic data derived from optically scanning a document (col. 2, lines 43-50), a system and method for recovering from a failure in the complete transmission of the electronic data to the e-mail server, (col. 3, lines 10-15; col. 6, lines 49-60), comprising means for and steps of:

Storing the electronic data to a storage device (92, 94 Fig. 3, col. 3, lines 15-20; col. 7, line 65 – col. 8, line 5);

Detecting a failure in the complete transmission of electronic data to the e-mail server (col. 4, lines 6-10);

And transmitting the electronic data from the storage device to the e-mail server (92, 94 Fig. 3, col. 3, lines 15-20; col. 7, line 65 – col. 8, line 5).

Art Unit: 2622

Albal fails to directly teach establishing communication with the e-mail server. However, Albal discloses transmitting the electronic data from the storage device to the e-mail server (92, 94 Fig. 3, col. 3, lines 15-20; col. 7, line 65 – col. 8, line 5). It would have been obvious to one of ordinary skill in the art at the time the invention was made to consider that in order to transmit electronic data from the storage device to the server some form of communication must first be established.

Albal does not teach the recovery of a system for electronically transmitting electronic data derived from optically scanning a document from a failure due to the loss of electrical power.

Park teaches a facsimile apparatus where a failure includes an interruption in electrical power (104c, Fig. 2; col. 3, lines 60-61), wherein storing the electronic data to a storage device includes storing the electronic data to a non-volatile storage device (col. 3, lines 66 – col. 2, line 3), and wherein detecting the failure in the complete transmission of electronic data includes examining the storage device for the electronic data after the interruption in electrical power (105', Fig. 2; col. 3, line 67 – col. 4, line 17). It would be obvious to one of ordinary skill in the art at the time the invention was made to modify the transmission failure in Albal to include an interruption of electrical power as taught in Park because both of them teach the recovery of fax data from a transmission failure. The improvement on Albal by Park would allow data protection in the case of failure due to loss of power and would provide a more stable system.

For claims 3, 10, and 15, Albal teaches a system and method for monitoring a communication status with the email server, wherein detecting the failure includes detecting a failure in communication with the email server (Fig. 5-9; col. 10, lines 15 - 62)

For claims 4, 16, 17, and 18, Albal fails to directly disclose a system and method of establishing communication with the server wherein the failure interrupts communication with the server. However, Albal discloses a system where multiple acknowledgements of receipt of data is sent back to the sender in the case of successful transmission and wherein if an unsuccessful transmission occurs, a notification of failure is received by the sender (col. 4, lines 6-10; col. 10, lines 15-62). It would have been obvious to one of ordinary skill in the art at the time the invention was made to consider that in case of a failure in communication with the email server, the notification system of Albal would notify the sender of the failure. This would allow for the user to be notified in the case of failure interrupting communication with the server.

For claim 5, Albal fails to teach a system and method of before detecting the failure and after establishing communication with the email server, beginning transmission of the electronic data to the email server wherein the failure interrupts the transmission of electronic data to the email server from the storage device.

Park discloses a system and method of before detecting the failure and after establishing communication with the email server, beginning transmission of the electronic data to the email server wherein the failure interrupts the transmission of electronic data to the email server from the storage device (105, 106, 104a, 104b, 104c, and 105', Fig. 2).

For claims 6, 11 and 19, Albal teaches confirming receipt of the electronic data by the e-mail server (124, Fig. 5, col. 4, lines 6-8).

Art Unit: 2622

3. Claims 7, 12, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albal as applied to claims 1, 8 and 13 above, and further in view of Nobuta (U.S. Patent No. 5,258,853).

For claims 7, 12, and 20, Albal does not teach a system and method of removing the electronic data from the storage device after the transmission of electronic data to the email server. Nobuta discloses a system and method of removing the electronic data from the storage device (40, Fig. 1, col. 5, lines 6 – 9) after transmission of the electronic data (S92 – S98, Fig. 8E, col. 58 – 63). It would be obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of removing the data from the storage after the transmission is complete as taught in Nobuta to the system in Albal since Albal teaches that the memory in the system can temporarily store the data. That combination would prevent the system memory used for image data from getting completely exhausted.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Toyoda (U.S. Patent No. 6,094,277) teaches an internet facsimile apparatus and email communication method, which notifies the sender of data that has resulted in an error.

Hochman (U.S. Patent No. 5,838,685) discloses a method and apparatus for the transmission of data files over a network in connection with a store and forward system.


Art Unit: 2622

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason L Sherrill whose telephone number is 703-306-4053. The examiner can normally be reached on M-F 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Coles can be reached on 703-305-4712. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-5397 for regular communications and 703-306-5397 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

JLS  
August 22, 2003

  
EDWARD COLES  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600